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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 163/2016 and CM APPL.36630/2016

KAWALJEET KAUR KATHURIA & ORS Petitioners

Through: Mr. Piyush Kaushik, Advocate

versus

DR PRITAM SINGH SABHARWAL & ORS Respondents

Through: Mr. Ashish Dixit, Advocate with
Mr. Rishabh Tripathi, Adv. for R-1.
Mr. Subhash Chand, Adv. for R-2,4
& R-5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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01.03.2018

After some hearing, the counsel for the first respondent, who was the plaintiff of the suit – CS (OS) No.9909/2016 – in which the impugned order dated 22.07.2016 was passed, permitting the said suit to be withdrawn and liberty granted as prayed by the application under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (CPC), fairly concedes that instead of “liberty” being granted, as prayed in the said application, “*to take recourse to appropriate legal remedies in accordance with law*”, the impugned order may be modified so as to read that the plaintiff of the case, *i.e.*, the first respondent herein, reserved his right to pursue the remedies available to him under the law.

The learned counsel for the petitioners, while agreeing to the above prayer for modification of the impugned order submitted that he also

reserves his rights to raise all defences including issue as to maintainability of a fresh suit, it being C.S. No.613464/2016, presently pending in the Court of Ms. Manjusha Wadhwa, ADJ, West District at Tis Hazari Courts, Delhi by appropriate pleadings, particularly in light of the claims made in para 16 of the plaint filed in the said fresh suit referring to “*liberty*” taken from the trial Court in the case from which the present proceedings arise.

While the rights of the petitioners to raise such objections in law has to be protected, liberty also needs to be granted to both sides to bring in appropriate amendments to the pleadings in the fresh suit, so as to efface references to “*liberty*” taken from the trial Court.

Ordered accordingly.

With these observations, the petition and the applications filed therewith stand disposed of.

MARCH 01, 2018
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R.K.GAUBA, J.